

EXHIBIT 28
FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

vs.

GOOGLE, LLC,

Defendant.

Civil Action
No. 1:20-cv-3010

Washington, DC
October 30, 2023
9:31 a.m.

Day 30
Morning Session

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 Q. You use chat to communicate with others at Google,
2 right?

3 A. Yes.

4 Q. Google's policy of automatically deleting chats after
5 24 hours applies to one-on-one chats; is that correct?

6 A. Yes, that's correct.

7 Q. So there are some group chats that are automatically
8 set to history on?

9 A. Yes.

10 Q. And those chats are preserved for longer than 24 hours
11 unless someone changes the setting to history off, correct?

12 A. That's correct.

13 Q. And sometimes you ask for your group chats to be set
14 to history off, correct?

15 A. Very rarely, I think, yeah.

16 Q. Rarely, but it does happen?

17 A. I couldn't recall one, but in the deposition there was
18 one chat which I think you all asked me about. So that was the
19 first time I recall doing so.

20 Q. If you would please turn to UPX973. Mr. Pichai,
21 UPX -- oh, I'll give you a moment. 973.

22 A. Maybe I'll go off this, I'm not able to find it here.

23 Q. Okay. Mr. Pichai, UPX973 reflects a chat between you
24 and a colleague at Google on October 12th, 2021, correct?

25 A. Yes.

1 **MS. BELLSHAW:** Your Honor, I'd move to admit UPX973 into
2 evidence.

3 **MR. SCHMIDTLEIN:** No objection.

4 **THE COURT:** It will be admitted.

5 (Exhibit UPX973 admitted into evidence)

6 **MS. BELLSHAW:** Your Honor, just for your purposes, I
7 wanted to note that UPX973 is one of the documents that was in
8 the binder that we passed up to you.

9 **THE COURT:** I have it. Does Mr. Pichai have it?

10 **MS. BELLSHAW:** He does. I just wanted to make sure you
11 knew that it was part of the binder we passed up to you about a
12 week ago for the evidentiary admission.

13 **THE COURT:** I see, I understand. Okay.

14 **BY MS. BELLSHAW:**

15 **Q.** Mr. Pichai, looking at UPX973, do you see in the first
16 message you ask Ms. Singer for a link to your leadership
17 circle?

18 **A.** Yeah, this is an external event for our Google Cloud
19 business that I was publicly speaking. That's the leader
20 circle, yes.

21 **Q.** The leader circle refers to your leadership team,
22 right?

23 **A.** No.

24 **Q.** It doesn't?

25 **A.** This is -- Emily Singer is my communications person,

1 and I was doing a Cloud event. The leader circle, the reason
2 I'm aware is we recently did one. And we do annual Cloud Next
3 events. We just finished the leader circle event for that one,
4 too. So this is an external event I'm speaking on behalf of
5 our Google Cloud platform publicly.

6 Q. So looking at the second message that you sent in
7 UPX973, you wrote: "Can we change the setting of this group to
8 history off."

9 Do you see that?

10 A. Yes.

11 Q. So you understood that group chats like this would be
12 preserved unless you took steps to turn history off, correct?

13 A. That's correct, yeah.

14 Q. October 2021 is approximately one year after the
15 complaint in this litigation was filed, right?

16 A. I don't know the exact dates, but I'll take your word
17 for it.

18 Q. At the time of this chat in October of 2021, you were
19 under a litigation hold for this case?

20 A. Yes.

21 Q. Despite being under a litigation hold, you
22 preemptively asked for the chat for this meeting to be set to
23 history off, correct?

24 A. This is -- had nothing even close remotely to anything
25 covered by this litigation. I'm getting ready for an external

1 event. I don't recall the specifics, but normally I would do
2 this if I were about to comment on something of a personal
3 nature about some person. So I think they were planning the
4 speaker list for the event, about to ask my input, so I was
5 about to comment on who I thought would be a good speaker or
6 not. That's what I vaguely recall.

7 Q. So your recollection is that this meeting was for an
8 internal chat about the leader circle that you were giving
9 externally?

10 A. Ms. Emily Singer prepares me when I'm publicly
11 speaking outside. This is to our top Cloud customers, Google
12 Cloud platforms customers, so it's a public event I'm doing.
13 And so we're going through the speaker lineup, the moderator,
14 who's going to ask me. So it's things like that.

15 Q. So the meeting that you were asking for the link, that
16 was for an internal discussion about a public speaking event;
17 is that correct?

18 A. That's right.

19 Q. And so you were asking in UPX973 to change the setting
20 of that internal group chat to history off, correct?

21 A. That's correct.

22 Q. And then nine seconds after you make that request, to
23 change the setting of the internal group chat to history off,
24 you deleted that request, correct?

25 A. I cannot -- it's not -- I don't recall both asking and

1 deleting it in detail. It doesn't seem that I deleted it,
2 because it, again, says that, and it looks like the
3 conversation never got deleted.

4 Q. So you don't know if there are other chats where you
5 asked them to be set to history off, correct?

6 A. No, but my sense is just like you found this, if there
7 were any other chats, you would -- you know, maybe it would get
8 discovered.

9 Q. Well, if the setting of the chat was for history off,
10 that chat would have been deleted after 24 hours, correct?

11 A. No, no, but -- sorry, are you asking are there other
12 occasions where I asked also can we change the setting of this
13 group to history off? If I did that on a chat which had
14 history on, you would have found it. I think this is literally
15 the only time.

16 Q. But if you had made that request orally, there would
17 be no written record of your request to turn a chat history
18 off?

19 A. Sure.

20 Q. So it's possible that there are other chats where you
21 ask the history to be set to off, correct?

22 A. I don't recall.

23 Q. You don't recall, but it's possible?

24 A. Yes, sure, it's possible.

25 Q. And if there are other chats that you asked to be set

1 to history off, you don't know what the subject matter of those
2 chats were, sitting here today?

3 **A.** I take great care to comply with all litigation holds.
4 I never use chat in the context of discussing substantive
5 discussions about any of these material topics.

6 **Q.** But if you had had substantive conversations on a chat
7 set to history off, that would not have been preserved,
8 correct?

9 **A.** That's correct. I didn't do that, but you're right.

10 **MS. BELLSHAW:** Thank you, Mr. Pichai. I have no further
11 questions.

12 **THE COURT:** Thank you, Ms. Bellshaw.

13 All right, Mr. Cavanaugh -- well, let me ask you, how long
14 are you anticipating?

15 **MR. CAVANAUGH:** Probably about 30 minutes, Your Honor.

16 **THE COURT:** Let's go ahead and take lunch then.

17 So Mr. Pichai, we're going to take our lunch break now.
18 We'll return to resume at 1:30. Same instruction as before,
19 please do not discuss your testimony during lunchtime. Thank
20 you, sir.

21 See everybody at 1:30.

22 (Lunch recess taken at 12:29 p.m.)
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